IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CIVIL REVISION APPLICATION NO.33 OF 2004

Shrikrishna Haribhau Gore and others ..Applicants

V/s.

Sadashiv Laxman Pudale and others ..Respondents

Mr.M.D.Angal, advocate for applicants

Respondents served

Coram : D.G.Karnik, J

Date : 13th November, 2006

P.C.

1. Heard learned counsel for the revision applicants. None present for respondents.

2. This revision application is directed against the judgment and order passed by the learned District Judge, Sangli, dismissing their appeal and confirming the decision of the trial Court dismissing their suit for damages.

3. The applicants filed a suit against respondents who are officers of the Sangli

Municipal Council, for damages of Rs.12,360/- for illegal removal of tiles (Farshi) in front of their shop. The applicants had laid tiles covering the drainage passing in front of their shop. The respondents, purporting to act in exercise their powers under the Municipal Councils and Nagpur Panchayats and Industrial Townships Act, 1965 (for short “the Municipalities Act”) removed the said tiles which amounted to errection of an obstruction on the road. According to the applicants, the respondents had no authority to do so and their act was illegal and ultravirus their powers under the Municipalities Act. The applicants, after issuance of the necessary notice under Section 304-A of the Municipalities Act filed a suit against respondents claiming damages. The trial Court held that the applicants had proved that the respondents had caused damages to the tiles. The trial Court however, dismissed the suit on the ground that the suit was barred by limitation as it was filed after expiry of the period of six months from the date of accrual of the cause of action. The cause of action for the suit had arisen on 7th October, 1991

when the tiles were illegally broken. The suit was filed on 13th April, 1992 i.e.after expiry of period of six months from the date of accrual of the cause of action. The trial Court held that as per Section 304-A of the Municipalities Act the suit was required to be filed within six months from the date of accrual of the cause of action and as the suit filed after expiry of six months it was barred by limitation.

4. Aggrieved applicants filed an appeal bearing Civil Appeal No.46 of 1996 in the District Court, Sangli. The learned District Judge confirmed the decision that suit was barred by limitation. On merits he held that applicants had committed encroachment on the municipal property by putting up tiles over the drainage and the respondents were entitled to remove said encroachment. The respondents had not committed any illegality by removal of the tiles. He therefore, dismissed the suit also on merits.

5. Learned counsel for the applicants submitted

that the trial Court as well as lower appellate Court erred in dismissing the suit on the ground that it was barred by limitation. He firstly submitted that the respondents were not acting within the scope of their authority and therefore, it was not necessary to issue any notice U/s.304-A and the special period of limitation of six months prescribed by the Muncipalities Act did not apply. Alternatively he submitted period of notice was required to be excluded in computing period of limitation by virtue of sub-Section 2 of section 15 of the Limitation Act. Alternative submission is meritorious. Sub-Section 2 of Section 15 of the Limitation Act reads as under :-

"Where notice in accordance with the requirement for the Law is given period of such notice will exclude while computing such period."

If a notice was required to be given the statutory period of 30 days of the notice would be excluded while computing the period of limitation. Suit was filed after six months and twenty three days from the date of accrual of cause of action. If the statutory notice of 30 days is excluded the suit is

filed within a period of five months and twenty three days and would be within limitation. The trial Court as well as the lower appellate Court erred in dismissing the suit on the ground that it was barred by limitation.

6. The lower appellate Court however has dismissed the appeal not only on the ground of limitation but also on merits. The lower appellate Court has recorded a finding of fact that tiles were placed by the applicants by committing an encroachment on municipal property and therefore the respondents were entitled to remove the tiles. This being a possible finding of fact in the absence of any perversity cannot be interfered with in the exercise of revisional jurisdiction. In the circumstances, though, applicants have proved that the suit was within limitation they must fail on merits.

7. For three reasons, the revision application is dismissed but in the circumstances without any order as to costs.

(D.G.Karnik, J.)